

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
JUL 05 2023	
CLERK U.S. DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

1 Jason Crews  
 2 1515 N Gilbert Rd Ste 107-204  
 3 Gilbert, AZ 85234  
 4 602-295-1875  
 5 Jason.crews@gmail.com

7 UNITED STATES DISTRICT COURT  
 8 FOR THE DISTRICT OF ARIZONA  
 9 PHOENIX DIVISION

10  
 11 Jason Crews,  
 12 Plaintiff,  
 13 vs.  
 14 Tanpri Media & Arts, Inc.,  
 15 and  
 16 Elizabeth Beauvi,  
 17 And  
 18 Matthew Capozzoli;  
 19 Defendants.

Case No.: CV23-01236-PHX-JJT

First Amended Complaint for Violations  
 of:

1. NEGLIGENT VIOLATIONS OF  
 THE TELEPHONE CONSUMER  
 PROTECTION ACT [47 U.S.C. §227 ET  
 SEQ.]
2. WILLFUL VIOLATIONS OF  
 THE TELEPHONE CONSUMER  
 PROTECTION ACT [47 U.S.C. §227 ET  
 SEQ.]

26 DEMAND FOR JURY TRIAL

## **COMPLAINT**

## Preliminary Statement

1. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in response to widespread public outrage about the proliferation of intrusive, nuisance calling practices. See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

2. The Defendants in this action Tanpri Media & Arts, Inc. and Elizabeth Beauvi orchestrated placing at least one illegal prerecorded “robocall” to Plaintiff’s telephone number and seven illegal telemarketing calls using an Automated Telephone Dialing System (“ATDS”) to a number assigned to a cellular service which was included on the national Do-Not-Call List.

3. Plaintiff never consented to receive such messages.

## Parties

4. Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County, Arizona at all relevant times, and a resident of this District.

5. Defendant Tanpri Media & Arts, Inc. (“Tanpri”) doing business as the Consumer Legal Request is a Corporation, incorporated in New York, and in the business of “Mass torts made simple... Camp Lejeune”.

6. Defendant Elizabeth Beauvi (“Beauvi”), a resident of Queens County, New York, was at all times relevant the Chief Marketing Officer of Tanpri Media & Arts, Inc. and directed the illegal calls complained of herein.

7. Defendant Matthew Capozzoli (“Capozzoli”), a resident of Cook County, Illinois, was at all times relevant the Chief Marketing Officer of Consumer Legal Request, and directed the illegal calls complained of herein.

11

## Jurisdiction & Venue

8. The Court has federal question subject matter jurisdiction over these TCPA claims: *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

9. The Court has specific personal jurisdiction over the Defendants because they have repeatedly placed calls to Arizona residents, including the Plaintiff. Defendants purposely placed calls to Arizona residents.

10. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District, as the calls to Plaintiff were placed into this District.

## **The Telephone Consumer Protection Act**

8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the automated calling industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy[.]”: Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

9. Under the TCPA, an individual candidate such as Beauvi may be personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the TCPA, which reads, *inter alia*:

[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, Case 2:22-cv-02724-ER Document 1 Filed 07/11/22 Page 2 of 11 3 shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

10. When considering individual liability under the TCPA, other Courts have agreed that an officer or individual involved in the telemarketing at issue may be personally liable under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*, 2013 U.S. Dist. LEXIS 159985, \*10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have

held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.”) (cleaned up) and *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

11. Beauvi personally participated in the complained-of actions by personally directing and authorizing the scripting and selecting of calls to be made, selecting, and orchestrating the calling strategy, including by choosing to use pre-recorded calls.

12. Capozzoli personally participated in the complained-of actions by personally directing and authorizing the scripting and selecting of calls to be made, selecting, and orchestrating the calling strategy, including by choosing to use pre-recorded calls.

## Factual Allegations

13. To promote their services Defendants relied on prerecorded “robocalls.”

14. To promote their services Defendants also relied the use of ATDS systems.

15. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

16. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

17. The Cell Number has been on the Do-Not-Call registry since November 7,

2006.

18. Despite this registration, Defendants placed the calls summarized in the following table with an Automated Telephone Dialing Systems (“ATDS”).

call-date	call-time	callerID	pre-recorded	ATDS
12/9/22	12:25:00 PM	(480) 613-2983	FALSE	TRUE
1/17/23	10:17:00 AM	(480)365-9402	FALSE	TRUE
1/30/23	8:15:00 AM	(480)360-0666	TRUE	TRUE
1/31/23	8:42:00 AM	(480)856-8514	FALSE	TRUE
2/7/23	4:53:00 PM	(480) 360-0777	FALSE	TRUE
6/22/23	11:17:00 AM	(808) 435-2777	FALSE	TRUE
6/26/23	12:06:00 PM	(602) 293-0817	FALSE	TRUE

1  
2       19. The Cell Number is assigned to a cellular phone used exclusively for personal  
3 residential purposes.

4       20. Plaintiff did not consent to receive prerecorded or automated messages to his  
5 Cell Number.

6       21. Plaintiff did not consent to receive telephone calls via ATDS.

7       22. The Cell Number is not associated with a business.

8 Calls to Plaintiff

9       23. Plaintiff had no prior business relationship with Defendants.

10      24. On or about January 30, 2023, at 8:15 am, Plaintiff received a call presenting  
11 caller ID (480) 360-0666.

12      25. This call played a message with a pre-recorded voice.

13      26. After remaining on the line, Plaintiff was transferred to an individual who  
14 identified themselves as Sven said they were calling about the Camp Legune settlement  
15 and asked several screening questions.

16      27. After attempting and failing to transfer Plaintiff the caller disconnected the  
17 call.

18      28. Due to the similarity between this the scripting and accents of the callers and  
19 the scripting and accents of the callers on June 22, 2023, Plaintiff believes this call was  
20 placed by Defendants.

21      29. On or about January 31, 2023, at 8:42 am, an individual Sven called and said  
22 he spoke with Plaintiff the prior day.

23      30. Sven wanted to ask Plaintiff screening questions which plaintiff did not want  
24 to answer and disconnected the call.

25      31. Due to the similarity between this the scripting and accents of the callers and  
26 the scripting and accents of the callers on June 22, 2023, Plaintiff believes this call was  
27 placed by Defendants.

1       32. On or about February 7, 2023, at 4:53 pm, plaintiff received a telephone call  
2 from an individual who identified themselves as Amanda.

3       33. Due to the similarity between this the scripting and accents of the callers and  
4 the scripting and accents of the callers on June 22, 2023, Plaintiff believes this call was  
5 placed by Defendants.

6       34. On or about June 22, 2023, at 11:17 am, Plaintiff received a phone call  
7 presenting caller ID (808) 435-2777 to the Cell Number.

8       35. After saying hello twice and hearing a beep, an individual who identified  
9 himself as John came on the line, and said he was calling from "Camp Legune Watter  
10 Settlement".

11       36. After asking plaintiff some various screening questions he said he was going  
12 to transfer Plaintiff to a "Senior Supervisor" and coached him on what answers to  
13 provide.

14       37. John then proceeded to transfer Plaintiff to a individual who identified himself  
15 as Alex.

16       38. Alex re-asked the screening questions. Said he was going to transfer Plaintiff  
17 to a licensed agent, and provided further coaching questions, and advised Plaintiff which  
18 ailments to claim.

19       39. Alex advised Plaintiff to lie to the licensed agent and say he had leukemia in  
20 order to get his cash settlement.

21       40. Alex asked Plaintiff to agree to future calls and to overwrite any prior do-not-  
22 calls list he may be part of.

23       41. Alex then transferred Plaintiff.

24       42. Plaintiff was played recording which said "remaining on the line will serve as  
25 consent for this communication to proceed despite any prior affiliation with a do not call  
26 list."

43. Eventually an individual who identified themselves as Shania from Consumer Legal Request.

44. Shania asked if Plaintiff consented to be contacted about this case.

45. Shania asked several screening questions.

46. Shania provided their call back number of 888-487-2154 and a website of consumerlegalrequest.com.

47. Plaintiff asked to be placed on their internal do not call list and to be sent a copy of their internal do not call policies.

48. Shania said sure and ended the call.

49. Plaintiff never provided his consent for or requested these calls.

50. The call was not necessitated by any emergency.

51. Plaintiff was harmed by these calls. He was temporarily deprived of the legitimate use of his telephone, and his privacy was improperly invaded. Plaintiff was charged for the calls. Moreover, the calls injured Plaintiff because they were frustrating, obnoxious, annoying, and a nuisance, and they disturbed the solitude of Plaintiff.

52. On or about June 24, 2023, Plaintiff emailed defendants at [info@tanprimedia.com](mailto:info@tanprimedia.com) requesting to be placed on Defendants internal do-not-call list, to be sent a copy of Defendant's do-not-call policy, and to send any evidence in their possession of prior express consent to Plaintiff.

53. Plaintiff has not received a copy of their internal do-not-call policy or any evidence of prior express consent.

54. Plaintiff avers and therefor believes this is because no Defendant possessed no internal do-no-call policy exists.

## **Defendants' Use of an ATDS**

55. The calls were conducted using an Automatic Telephone Dialing System (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the capacity to store numbers to be called using a random or sequential number generator or

1 to produce numbers to be called using a random or sequential number generator:

2 *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

3       56. The Third Circuit recently clarified that “Congress envisioned a broad  
4 understanding of ‘equipment’” that constitutes an ATDS. It also clarified that the analysis  
5 of whether an ATDS was used in violation of the TCPA centers around “whether the  
6 Defendants employ[s] [ATDS] capacities to make automated calls”: *Panzarella v.*  
7 *Navient Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that  
8 Congress intended to “ban all autodialed calls” because Congress “found autodialer  
9 technology to be uniquely harmful”: *Id.* at 879 (cleaned up).

10      57. In enacting the ATDS prohibition, the Third Circuit cited favorably to  
11 Congressional understanding “that telemarketers could transform ordinary computers into  
12 autodialers through minor and inexpensive modifications,” including by “relying on  
13 computerized databases containing telephone numbers during their dialing campaigns”:  
14 *Id.* at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS  
15 prohibition, Congress intended to remedy the problems caused by callers using computer  
16 software to dial numbers randomly or sequentially from a list or database: *Id.*

17      58. The system(s) that Defendants used to place the calls to Plaintiff is/are an  
18 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the  
19 phone, and only then connect Plaintiff to a human being.

20      59. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This  
21 supports the inference that Defendants used an ATDS, such as one that “use[s] a random  
22 [or sequential] number generator to determine the order in which to pick phone numbers  
23 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

24      60. Other courts have held, post-Facebook, that allegations similar to those herein  
25 of the absence of a relationship between the parties, and the random nature of the  
26 automation device (such as the ability to randomly generate caller ID numbers), are all  
27 indicia of use of a random or sequential dialing device. This gives rise to the inference at

1 the pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat'l  
2 Republican Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at \*11 (E.D.  
3 Pa. May 26, 2021).

4 61. No facts exist here to support the conclusion that Defendants was calling from  
5 a curated list of his past customers. In contrast to a company that dials calls en masse to  
6 multiple individuals from a list of telephone numbers (as here), a company that calls its  
7 existing customers utilizing an imported customer list does not place calls using an  
8 ATDS. Such calling uses a database targeting existing customers' information rather than  
9 computer-generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at  
10 881–882.

11 62. Plaintiff is ignorant of the exact process by which the system(s) used by  
12 Defendants operates other than by drawing the reasonable inference and alleging that the  
13 system(s) stores or produces telephone numbers randomly or possibly sequentially based  
14 on the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as  
15 at least one district court explained, "The newly clarified definition of an ATDS is more  
16 relevant to a summary judgment motion than at the pleading stage": *Gross v. GG Homes,  
17 Inc.*, No. 3:21-cv-00271-DMS-BGS, 2021 WL 2863623, at \*7 (S.D. Cal. July 8, 2021);  
18 accord *Miles v. Medicredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo.  
19 July 14, 2021).

#### **Defendants' Conduct Was Knowing and Willing**

20 63. Defendants knew his actions were in violation of the TCPA and willfully  
21 continued his conduct.

#### **The TCPA Prohibits All Automated Calls to Protected Numbers**

22 64. The TCPA makes it unlawful "to make any call (other than a call made for  
23 emergency purposes or made with the prior express consent of the called party) using an  
24 automated telephone dialing system or an artificial or prerecorded voice ... to any  
25 telephone number assigned to a ... paging service, cellular telephone service, specialized  
26

1 mobile radio service, or other radio common carrier service, or any service for which the  
2 party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

3       65. Congress singled out these services for special protection because Congress  
4 realized their special importance in terms of consumer privacy (as is the case with  
5 cellular phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356,  
6 (2020) (Gorsuch, J. & Thomas, concurring in part and dissenting in part).

7       66. According to findings by the Federal Communications Commission ("FCC"),  
8 which is the agency Congress vested with the authority to issue regulations implementing  
9 the TCPA, such messages are prohibited because, as Congress found, automated or  
10 prerecorded messages are a greater nuisance and invasion of privacy than live ones, are  
11 costly, and are inconvenient.

12       67. The TCPA provides a private cause of action to persons who receive calls in  
13 violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

14       68. These causes of action apply to users of any of four protected services (pager,  
15 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch  
16 system], or another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or  
17 any service, including residential, VoIP, and landline services, for which the called party  
18 is charged: *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md.  
19 2013).

20       69. "Non-Emergency pre-recorded voice or autodialed calls to the destinations  
21 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express  
22 consent of the called party."

23       70. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone  
24 solicitation to ... [a] residential telephone subscriber who has registered his or her  
25 telephone number on the National Do-Not-Call Registry of persons who do not wish to  
26 receive telephone solicitations that is maintained by the Federal Government" and defines  
27 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of  
28

1 encouraging the purchase or rental of, or investment in, property, goods, or services,  
 2 which is transmitted to any person...": U.S.C. § 227(f)(15).

3       71. The FCC also recognized that "wireless customers are charged for incoming  
 4 calls whether they pay in advance or after the minutes are used": In re Rules and  
 5 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,  
 6 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

7       72. In 2013, the FCC required prior express written consent for all autodialed or  
 8 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.  
 9 Specifically, it ordered:

10       [A] Consumer's written consent to receive telemarketing robocalls must be signed  
 11 and be sufficient to show that the consumer: (1) received "clear and conspicuous  
 12 disclosure" of the consequences of providing the requested consent, i.e., that the  
 13 consumer will receive future calls that deliver prerecorded messages by or on behalf of a  
 14 specific seller; and (2) having received this information, agrees unambiguously to  
 15 receive such calls at a telephone number the consumer designates. In addition, the  
 16 written agreement must be obtained "without requiring, directly or indirectly, that the  
 17 agreement be executed as a condition of purchasing any good or service."

18       73. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot.*  
 19 *Act of 1991*, 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

20       74. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery  
 21 restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any  
 22 telephone call ... using an automatic telephone dialing system or an artificial or  
 23 prerecorded voice."

24       75. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency  
 25 telephone line," "guest room or patient room of a hospital, health care facility, elderly  
 26 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §  
 27 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing]to be initiated, any

1 telephone call that includes or introduces an advertisement or constitutes telemarketing,  
2 using an automatic telephone dialing system or an artificial or prerecorded voice, to any  
3 of the lines or telephone numbers described... "

4       76. The National Do-Not-Call Registry allows consumers to register their  
5 telephone numbers and thereby indicate their desire to not receive telephone solicitations  
6 at those numbers: 47 C.F.R. § 64.1200(c)(2).

7       77. A listing on the Registry "must be honored indefinitely, or until the  
8 registration is cancelled by the consumer or the telephone number is removed by the  
9 database administrator": *Id.*

10      78. The TCPA and implementing regulations prohibit the initiation of telephone  
11 solicitations to residential telephone subscribers whose numbers are on the Registry and  
12 provide a private right of action against any entity making those calls or "on whose  
13 behalf" such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

14      79. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for  
15 telemarketing purposes to a residential telephone subscriber unless such person or entity  
16 has instituted procedures for maintaining a list of persons who request not to receive  
17 telemarketing calls made by or on behalf of that person or entity." It goes on to establish  
18 specific "minimum standards":

19       (1) "Persons or entities making calls for telemarketing purposes must have a  
20 written policy, available upon demand..."

21       (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and  
22 trained in the existence and use of the do-not-call list."

23       (3) "If a person or entity making a call for telemarketing purposes ... receives a  
24 request ... not to receive calls from that person or entity, the person or entity must record  
25 the request and place the subscriber's name ... and telephone number on the do-not-call  
26 list at the time the request is made ... must honor a residential subscriber's do-not-call  
27 request within a reasonable time from the date such request is made."

(4) "A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted."

(5) "A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls."

## Claims

## Count One

80. Plaintiff incorporates the foregoing allegations as fully set forth herein.

81. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute violations of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

82. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

83. Plaintiff is also entitled to and does seek injunctive relief prohibiting Defendants and/or his affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or sending messages, except for emergency purposes, to any number using an artificial or prerecorded voice in the future.

84. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and willful violations of 47 U.S.C. § 227(b)(3)(B)

85. Defendants' violations were willful and/or knowing.

Count Two

86. Plaintiff incorporates the foregoing allegations as fully set forth herein.

87. Defendants called Plaintiff's private residential telephone number which was registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

88. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

89. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and willful violations of 47 U.S.C. § 227(c)(3)(F).

90. Defendants' violations were willful and/or knowing.

## **Relief Sought**

WHEREFORE, Plaintiff requests the following relief:

A. Injunctive relief prohibiting Defendants from calling telephone numbers using an artificial or prerecorded voice and/or ATDS.

B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

C. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this July 1, 2023.

*Jason Crews*